



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Updated Civil Penalty Schedules and Guidelines

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability.

SUMMARY: FRA is issuing this notice to advise all interested stakeholders that it has issued, and made available on its website, updated civil penalty schedules and guidelines (Schedules) to account for inflation. This notice explains FRA's increase to its guideline rail safety civil penalty amounts. This notice also announces FRA's intent to adjust the civil penalty amounts line-by-line on an annual basis for inflation, after this adjustment.

FOR FURTHER INFORMATION CONTACT: Veronica Chittim, Senior Attorney, Office of the Chief Counsel, telephone: 202-480-3410, e-mail: veronica.chittim@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety and hazardous materials transportation statutes, regulations, and orders, including the civil penalty provisions codified primarily at 49 U.S.C. chs. 51 and 213.¹ FRA currently has safety regulations in 36 parts of the Code of Federal Regulations (CFR) that contain provisions establishing the agency's authority to impose civil penalties if a person² violates any requirement in the pertinent portion of a statute, regulation, or order. Out of those 36 CFR parts, 32 contain civil penalty Schedules constituting a statement of agency policy. These Schedules were historically issued as an

¹ 49 U.S.C. 103 and 49 CFR 1.89; 49 U.S.C. chs. 51, 201-213.

² 49 CFR 209.3.

appendix to the relevant part of the CFR. In 2019, FRA relocated the existing Schedules from the CFR to FRA's website (<https://railroads.dot.gov/legislation-regulations/civil-penalties-schedules-guidelines>).³ Since 2019, FRA has incorporated updates to the Schedules to account for regulatory changes, to reflect updated minimum and maximum statutory civil monetary penalty (CMP) amounts, and to add Schedules for FRA regulations (i.e., 49 CFR parts 271 and 299).

FRA last published comprehensive, line-by-line revisions to the Schedules of its safety regulations in 1988.⁴ The revisions reflected the higher maximum penalty amounts the Rail Safety Improvement Act of 1988 (RSIA of 1988) established.⁵ With the exception of the penalties relating to the hours of service laws (49 U.S.C. ch. 211),⁶ RSIA of 1988 raised the maximum penalty for an ordinary violation from \$2,500 to \$10,000 (ordinary maximum) and to \$20,000 for a grossly negligent violation or pattern of repeated violations that has caused an imminent hazard or death or injury to individuals, or has caused death or injury (aggravated maximum). Therefore, FRA published amendments to the Schedules to “give effect to the full range of civil penalties . . . permitted to be assessed for violation of specific regulations.”⁷ In these amendments, FRA revised not only the ordinary and aggravated maximum CMP amounts per violation, but also the individual, line-item penalties for specific sections or subsections of the regulations.

Since the publication of the Schedules in 1988, FRA has periodically adjusted its minimum CMP and its ordinary and aggravated maximum CMPs to conform to the

³ 84 FR 23730 (May 23, 2019).

⁴ 53 FR 52918 (Dec. 29, 1988).

⁵ Pub. L. 100-342.

⁶ The Rail Safety Enforcement and Review Act (RSERA) (Pub. L. 102-365, Sept. 3, 1992), increased the maximum penalty for a violation of the hours of service laws, from \$1,000 to \$10,000, and in some cases to \$20,000, making these penalty amounts consistent with those of FRA's other regulatory provisions. RSERA also increased the minimum penalty from \$250 to \$500 for all of FRA's regulatory provisions.

⁷ 53 FR 52918.

mandates of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act).⁸ The Inflation Act required each agency to: (1) adjust by regulation each maximum CMP, or range of minimum and maximum CMPs, within that agency's jurisdiction; and (2) adjust those penalty amounts once every four years thereafter, to reflect inflation.⁹ FRA periodically reviewed its minimum CMP and ordinary and aggravated maximum CMPs as the Inflation Act required and adjusted them as appropriate.¹⁰

The Rail Safety Improvement Act of 2008 (RSIA) increased the ordinary and aggravated maximum CMPs to \$25,000 and \$100,000, respectively.¹¹ In 2008, FRA adjusted its minimum CMP from \$550 to \$650 under the Inflation Act, and also adopted \$25,000 as the ordinary maximum and \$100,000 as the aggravated maximum CMPs required by the RSIA.¹² Subsequently, in 2012, FRA adjusted the aggravated maximum CMP for inflation to \$105,000, but kept the minimum and ordinary maximum CMPs unchanged.¹³

Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Act), agencies were required to make a catch-up adjustment for the minimum, ordinary maximum, and aggravated maximum CMPs, followed by annual inflation adjustments.¹⁴ FRA has adjusted the statutory minimum, ordinary maximum, and aggravated maximum CMPs pursuant to the 2015 Inflation Act, with the most recent adjustment occurring on January 6, 2023.¹⁵

FRA's practice has been to issue Schedules assigning to each section or subsection of the regulations specific dollar amounts for initial penalty assessments.

⁸ Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by Sec. 31001(s)(1) of the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321-373, Apr. 26, 1996.

⁹ *Id.*

¹⁰ *See, e.g.*, 63 FR 11618 (Mar. 10, 1998); 69 FR 30591 (May 28, 2004); 72 FR 51194 (Sept. 6, 2007).

¹¹ Pub. L. 110-432, Div. A, Sec. 302.

¹² *Id.*; 74 FR 15387 (Apr. 6, 2009).

¹³ 77 FR 24415 (Apr. 24, 2012).

¹⁴ Pub. L. 114-74, Sec. 701 (Nov. 2, 2015).

¹⁵ *See* 49 CFR part 209, appendix A. Effective January 6, 2023, the minimum CMP was raised from \$976 to \$1,052, the ordinary maximum CMP was raised from \$31,928 to \$34,401, and the aggravated maximum CMP was raised from \$127,712 to \$137,603. *See* 88 FR 1114.

These Schedules (and all line-item penalty amounts found within them) are statements of agency policy that specify the penalty that FRA will ordinarily assess for the violation of a particular section or subsection of a safety regulation, and are published to inform members of the regulated community of the penalty FRA will likely assess for a given violation within the range of the statutory minimum to the aggravated maximum CMP. The Schedules are not regulations nor are they subject to notice-and-comment requirements. The Schedules provide guidance on FRA's policy in predictable situations, but they do not prevent FRA from using the full range of penalty authority when circumstances warrant. Thus, regardless of the amounts shown in the Schedules, FRA continues to reserve the right to assess, within the range established by the rail safety statutes (49 U.S.C. ch. 213) or by regulation under the 2015 Inflation Act, an amount other than that listed in the Schedules based on the circumstances of the alleged violation.

The Schedules included in these statements of agency policy continue to provide guideline penalty amounts for two categories of violations: ordinary (non-willful) and willful. Each Schedule lists the CFR section or subsection in the left-hand column, sometimes with additional designations to distinguish different types of violations (penalty codes) of the section or subsection, to facilitate the assessment of civil penalties.¹⁶ The corresponding guideline penalty amount for an ordinary violation and then the guideline penalty amount for a willful violation are listed. The ordinary penalties apply to railroads or other respondents, except individuals, while the "willful" column applies to willful violations committed by railroads or other respondents, including individuals.

Updated Civil Penalty Schedules

¹⁶ The only exception is 49 CFR part 231; the left-hand column of the Schedule lists the FRA defect codes for that part, and not the corresponding CFR sections. This is because the defect codes are organized by the type of safety appliance, which makes them easier to use than the section numbers of part 231, which are organized primarily by car or locomotive type. Nevertheless, if necessary, every defect code can be traced to a specific regulatory provision in part 231 or statutory provision in 49 U.S.C. ch. 203, or both.

FRA is updating, line-by-line, FRA's civil penalty Schedules to account for inflation. Although the 2015 Inflation Act did not require FRA to adjust individual, line-item penalty amounts, Congress' recognition in that Act of the negative impact that inflation has on the deterrent effect of FRA's civil penalties, and the fact FRA has never adjusted each of its civil penalties to specifically account for inflation, prompted FRA to update these statements of agency policy. FRA believes the new inflation-adjusted penalty amounts in these statements of agency policy will preserve the deterrent effects of the CMPs, supporting FRA's mission to make the United States' rail system safer.

Many of FRA's existing CMP guideline amounts are below the 2023 statutory minimum CMP amount of \$1,052.¹⁷ To address this issue both specifically for the existing \$1,000 guideline CMPs and to combat the erosion of the deterrent effect of FRA's civil penalties in a consistent manner, FRA is updating all rail safety CMP guideline amounts.

Effective for violations occurring on or after March 8, 2023, FRA has increased all rail safety penalties by multiplying the base, pre-adjusted penalty, by two. For example, a base penalty of \$2,500 will increase to \$5,000. Beginning in 2024, FRA intends to annually adjust all of its Schedules by a fixed inflation rate factor (using the Consumer Price Index), similar to the calculation used to adjust the statutory minimum and maximum CMPs. FRA will continue to post such inflation updates to its Schedules on FRA's website (<https://railroads.dot.gov/legislation-regulations/civil-penalties-schedules-guidelines>).

Conclusion

To promote railroad safety by enhancing and maintaining the deterrent effect of the civil penalty program, FRA is doubling its guideline penalties to account for inflation.

¹⁷ See, e.g., a guideline base CMP for a non-willful violation of 49 CFR 213.241, *Inspection records*, \$1,000.

Beginning in 2024, FRA expects to annually adjust its civil penalty Schedules indexed to the rate of inflation. All updates to these statements of agency policy can be found on FRA's website (<https://railroads.dot.gov/legislation-regulations/civil-penalties-schedules-guidelines>).

Issued in Washington, DC.

Allison Ishihara Fultz,

Chief Counsel.

[FR Doc. 2023-04957 Filed: 3/9/2023 8:45 am; Publication Date: 3/10/2023]